

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Michael HECKMEIER, et al.

U.S. Patent No.: 7,175,891
Serial No.: 10/673,909

Issue Date: February 13, 2007
Group Art Unit: 1756

Filed: September 30, 2003

Examiner: Shean Chiu Wu

For: LIQUID-CRYSTALLINE MEDIUM

**PETITION UNDER 37 C.F.R. §1.182 FOR REPLACEMENT OF TERMINAL
DISCLAIMER**

Mail Stop: PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby petition under 37 C.F.R. §1.182 for replacement of the terminal disclaimer filed on August 23, 2006, with the new attached terminal disclaimer. The petition fee set forth in § 1.17(f) is paid herewith.

The terminal disclaimer filed on August 23, 2006, was filed to overcome the obviousness-type double patenting rejections over a patent and a copending application in the Office action mailed June 21, 2006 (copy attached). However, the last three numbers for the copending application listed on the terminal disclaimer were mistakenly transposed with the last three numbers for the patent on the terminal disclaimer. As a result the terminal disclaimer was directed to the wrong copending application. The transposition error is clear from the prosecution history record. It is also clear from the fact that the incorrect copending application number is directed to an invention clearly completely unrelated to applicants'/patentees' invention.

The attached new terminal disclaimer corrects the error and should replace the terminal disclaimer filed on August 23, 2006. The replacement of the terminal disclaimer in this situation is in accordance with MPEP §1490(VII)(B.).

MPEP §1490(VII)(B.) additionally states that if the "error resulted in an earlier patent

term expiration date than provided by the corrected terminal disclaimer, a statement must be included in the corrected terminal disclaimer to retain that earlier expiration date.” In the instant case, the expiration from the erroneous terminal disclaimer would be January 21, 2023, while the expiration with the correct terminal disclaimer would be Feb. 6, 2023, a difference of about two weeks. Patentees fail to see why retaining the earlier expiration date makes sense or should be necessary. As pointed out above, the error in directing the disclaimer to the wrong application is clear on the record and would be clear to any person in the public reviewing the prosecution history. Further, there would be no point to correcting the error if patentees had to retain the erroneous expiration date. Accordingly, the apparently required statement is not included at this time. However, patentees will consider including such a statement if a suitable explanation of its necessity is provided.

The Commissioner is hereby authorized to charge any fees associated with this petition or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/John A. Sopp/

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Attorney Docket No.: MERCK-2781

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JAS:dap